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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re D.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. D.H., Defendant and Appellant.	A146126 (Contra Costa County Super. Ct. No. J14-00673)

D.H. appeals the juvenile court's order denying his request to have his DNA record expunged from the state databank after his adjudication of grand theft was reduced from a felony to a misdemeanor under Penal Code section 1170.18.[1] We affirm.

BACKGROUND

We recite only those background facts relevant to this appeal. In January 2012, in Solano County Superior Court, appellant admitted a felony violation of grand theft from the person (§ 487, subd. (c)) and a misdemeanor battery (§ 242). The juvenile court declared appellant a ward of the court and, pursuant to section 296.1, ordered him to provide a DNA sample to the state databank. Appellant's case was subsequently transferred to Contra Costa County.

[1] All undesignated section references are to the Penal Code.

In November 2014, the voters enacted Proposition 47, which reclassified certain property and drug offenses as misdemeanors and, in section 1170.18, created a procedure for individuals previously convicted of these offenses to have those convictions reduced to misdemeanors. (*In re J.C.* (2016) 246 Cal.App.4th 1462, 1469–1470, review den. (*J.C.*).) In June 2015, appellant filed a petition to have his felony grand theft violation reduced to a misdemeanor pursuant to Proposition 47. The petition also requested expungement of his DNA records from the state DNA databank. The court ordered the grand theft conviction reduced to a misdemeanor but denied the request to expunge the DNA record. In August 2015, appellant filed a motion for reconsideration, which the juvenile court denied without prejudice.[2]

DISCUSSION

Appellant argues (1) the juvenile court was obligated to expunge his DNA records under Proposition 47, notwithstanding recent amendments to section 299, the statute governing the expungement of DNA records; and (2) retention of his DNA records will violate his right to equal protection.

The first argument has been rejected in three published opinions. (*In re C.H.* (2016) 2 Cal.App.5th 1139, petn. for review pending, petn. filed Sept, 13, 2016, S237762 (*C.H.*); *In re C.B.* (2016) 2 Cal.App.5th 1112, review granted Nov. 9, 2016, S237801 (*C.B.*); *J.C., supra,* 246 Cal.App.4th 1462; but see *C.B.*, at pp. 1128–1138 (Pollak, J., dissenting).) As *J.C.* explained, although juveniles convicted solely of misdemeanors are not required to provide a DNA sample, a recent amendment to section 299, subdivision (f) "insert[ed] '1170.18' into the list of statutes that do not authorize a judge to relieve a person of the duty to provide a DNA sample," and thereby "prohibit[s] the expungement of a defendant's DNA record when his or her felony offense is reduced to a misdemeanor

[2] For both the petition and the motion for reconsideration, the parties stipulated below to incorporate into this case the arguments and/or rulings from certain other cases.

pursuant to section 1170.18." (*J.C.*, at pp. 1472, 1475; see also *C.B.*, at p. 1126.)[3] This amendment, effective January 1, 2016, was a clarification of existing law and therefore does not implicate the rule that statutory amendments ordinarily may not be applied retroactively. (*J.C.*, at pp. 1475–1482; *C.B.*, at pp. 1127–1128.) We find this reasoning persuasive and adopt the analysis in these cases.

As for appellant's equal protection argument, a similar claim was rejected in *C.H.* As *C.H.* explained: " 'Where, as here, a disputed statutory disparity implicates no suspect class or fundamental right, "equal protection of the law is denied only where there is no 'rational relationship between the disparity of treatment and some legitimate governmental purpose.' " ' " (*C.H.*, *supra*, 2 Cal.App.5th at p. 1151.) "Preserving the integrity and vitality of the state's DNA database system provides a rational basis to retain the DNA and profiles of offenders who were convicted before enactment of Proposition 47, even if they would not be required to provide DNA if convicted after its effective date. It is reasonable to conclude that a more comprehensive database, with samples from more offenders, is a more effective and utilitarian database." (*Id.* at p. 1152.) We agree with this analysis and reject appellant's equal protection claim.[4]

DISPOSITION

The order is affirmed.

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[3] *C.H.* concluded expungement was precluded under sections 299 and 1170.18 regardless of the recent amendments to section 299. (*C.H.*, *supra*, 2 Cal.App.5th at pp. 1145–1151 & fn. 4.)

[4] Appellant challenges the People's reliance on a newspaper article and various Department of Justice publications, which were not before the trial court and are not part of the record on appeal. We disregard the factual assertions the People attribute to sources outside the record.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.

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